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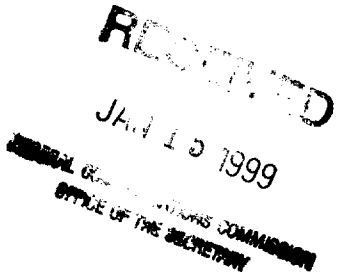

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Presentation
CC Dkt. No. 98-147

Dear Chairman Kennard:

This letter is submitted by the undersigned competitive telecommunications and information service companies and associations in response to the January 11, 1999 letter of the Honorable Larry Irving, Assistant Secretary, Department of Commerce, National Telecommunications and Information Administration, in the above-referenced proceeding (the "NTIA Letter"). As discussed below, the NTIA Letter supports several key principles of CLEC entry into local markets that are critical for robust competition to develop. Yet, while encompassing several important restatements and amplifications of the Administration's longstanding dedication to opening markets to competition, several of the letter's recommendations undermine fundamental elements that are critical to moving a monopoly environment to a competitive one. The Commission, and NTIA, have previously pursued a course reflecting vigorous enforcement of the pro-competitive provisions of the Telecommunications Act of 1996 ("1996 Act"). As companies who have experienced first-hand this challenge, we write to urge the Commission to remain steadfast to actions that open markets to competition.

Notably, the NTIA Letter confirms that inter-LATA relief should follow the competitive-checklist process carefully crafted by Congress in Section 271, as established by the 1996 Act. We think NTIA's position gives much support to the principle that the legal boundaries of section 271 are specific and must continue to be adhered to. Maintaining that principle would preclude the Commission from modifying or affording relief to the ILECs through the provision of interLATA data capability.

In particular, we agree with:

- The Administration's strong support of "the rapid, efficient deployment of broadband services to all Americans . . . "[1]The Administration's recognition, that "[o]ne of the most effective ways to promote investments in our nation's information infrastructure

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1 NTIA Letter at 1.

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is to introduce or further expand competition in communications and information markets."[2]

- The Administration's acknowledgement that Congress established, in the Telecommunications Act of 1996 ("1996 Act"), "the goal of accelerating deployment of advanced services" and that "it chose to achieve that objective 'by opening all telecommunications markets to competition'",[3] and its acknowledgement that "even the deregulatory provisions of the 1996 Act explicitly link regulatory relief to the presence of competition in the markets implicated."[4]

We embrace these principles as part of our shared commitment to making competition a reality, a commitment that encompasses all entry strategies. All of the undersigned have struggled since the enactment of the 1996 Act to gain entry to markets, " . . . because for decades government regulations established, protected, and perpetuated ILECs as monopoly providers of local voice telecommunications services." NTIA Letter at 3. We are deeply concerned about the letter's suggestions concerning ways that ILECs could gain further regulatory relief as an inducement to deploying DSL services. More succinctly, these suggestions will likely impede the goal of competitive deployment of broadband services to which the undersigned companies, the FCC, the Administration and the 1996 Act itself all aspire.

Our concerns fall generally into three categories.

- First, we question why there is serious consideration of the need for further regulatory relief for the ILECs at all. The record in this proceeding amply shows that ILECs are already deploying DSL, particularly where new entrants have challenged their intended dominance of high speed services. Prodded by the potential for competition in this burgeoning market, there is abundant proof that the ILECs themselves already have "a fair opportunity to market DSL services . . . ." NTIA Letter at 2.[5]

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2 U.S. Department of Commerce, Information Infrastructure Task Force, The National Information Infrastructure: Agenda for Action 7 (Sept. 1993), cited in NTIA letter at 1, n.3.

3 H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996), reprinted in 1996 U.S.C.C.A.C. 124 (Conference Report), cited in NTIA Letter at 2, n.5.

4 Letter from Larry Irving, NTIA, to Chairman William E. Kennard, CC Docket 98-91, 98-26 and 98-11, at 2 and n. 4 (filed July 17, 1998) (NTIA July Letter), cited in NTIA Letter at 2, n.5.

5 See Comments of AT&T, Exhibit E, Notice of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket 98-146 (released August 7, 1998).

In fact, SBC this week stated that, within its territory, ADSL would be available to 8.2 million residential customers and 1.3 million businesses by the end of 1999.[6] Bell Atlantic's rollout will reach 7.5 million homes by the end of 1999 and 14 million by the end of 2000.[7] U S WEST previously announced that 5.5 million customers throughout its region could have access to ADSL by July 1998.[8] Ameritech, which serves 11.1 million homes,[9] states that 7 out of 10 customers will have ADSL within 2-1/2 years.[10]

- Second, our collective efforts as new entrants in the local exchange and new information services markets over the past three years bear witness to the difficulties of incenting the monopoly ILECs to give access to the local loop and other network elements. The proposals of the NTIA letter, premised on the theory that the incentives can be managed if DSL services are simply provided through a separate subsidiary, do not reflect the reality we have experienced. It is a worthy principle to say that the ILEC must treat its affiliate and its competitors on equal terms -- but our hard experience proves that it is difficult to ensure effective enforcement.

- Third, we believe that it is contrary to the 1996 Act when a core section, the market opening provisions of section 251(c), are construed as "fully implemented" when, in fact, the provisions have not been implemented. Section 251(c) deliberately obligates the ILEC to meet its obligations broadly as to "any requesting telecommunications carrier" and "any [ILEC] telecommunications service," and Section 10 permits the forbearance proposed by NTIA only after those broad obligations have been "fully implemented." Therefore, we think that a narrow service-by-service inquiry into Section 251(c) compliance is at odds with the clear statutory language of Sections 251 and 10, which demands careful consideration as cornerstone provisions of the 1996 Act. Moreover, as a practical matter, the process of defining the "advanced services market" is also likely to become quite difficult, as the pace of technology constantly redefines, upsets, and blurs yesterday's service categories and service providers.

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6 SBC Communications, Inc., Press Release, "SBC: Leader of the Bandwidth" (Jan.12, 1999).

7 Bell Atlantic, Press Release, "America On Line and Bell Atlantic Form Strategic Partnership to Provide High Speech Access for the AOL Services," January 13, 1999.

8 U.S. West, Press Release, "US West to Launch Second 20-City Wave of Lightening Fast ADSL Service," June 5, 1998.

9 www.ameritech.com/corporate/who.html.

10 Ameritech, Press Release, "Ameritech brings future Internet to Royal Oak," April 16, 1998.

> The Commission was right in August 1998, when it declared, with the support of NTIA, that advanced services were subject to all the duties identified by the 1996 Act. The same copper wire is implicated with respect to advanced services as with respect to all other telephony services. It is contrary to the provisions of the law, which reflect not only the goal of competitive deployment of broadband services, but the goal of competitive deployment of *any* telephony services -- to "deem" statutory duties fulfilled when that is plainly not true.

We hasten to emphasize that we fully support the overriding policy objectives laid out in the NTIA Letter (at 1, 2), as well as in Administration statements, that robust competition will yield advanced services demanded by the American consumer. The rules under consideration "should foster further competition in the telecommunications markets and, thus, promote deployment of advanced services." Id. at 2. The NTIA Letter endorses practical ways to promote local competition such as:

- standards for collocation and loop availability,
- open access to pre-ordering and information on DSL capable loops,
- efficient collocation which is made available in a competitively neutral manner, and
- that any consideration of a separate subsidiary must encompass significant non-majority public ownership of the entity.

We also agree with NTIA that RBOC entry into interLATA services must follow the statutory process set out by Sections 271 and 272 of the Act. NTIA correctly noted that "section 271 bars BOCs from offering interLATA services until . . . [they comply] with the competitive checklist." NTIA Letter at n. 26. NTIA correctly observes, therefore, that any separate subsidiary "may not provide interLATA services until the BOC fully complies with the requirements of section 271." Id., at n. 45. The Commission's modification or forbearance authority is extremely confined, and cannot be expanded in as view of the specific statutory language and its intent to move monopoly markets toward a competitive environment. Nor, just as significantly, does it permit the Commission to establish statewide data LATAs that would allow the ILECs to provide interLATA data services.

This is precisely why we find NTIA's implementation proposals regarding deregulation and the ILEC advanced services subsidiary so at odds with our experience in the marketplace. Progress on competitive rollout of advanced services can be furthered with rules and enforcement of the statutory mandates for local competition (i.e., efficient collocation, access to conditioned loops), as NTIA supports, and not compromises on those mandates.

Given this record, there is no justification for proposals that allow the ILECs' advanced services affiliates to benefit directly and indirectly from the ILEC's monopoly advantage in the many ways that NTIA proposes:

- cost-free transfers of equipment that is favorably collocated and paid for by the monopoly's rate payers;

- free transfers of ILEC customer accounts to the affiliate's services, with no opportunity for the customer to choose another provider;

- joint marketing of ILEC services by the affiliate, or resale of ILEC services by the affiliate under 251(c)(4), in a way that is classically destined to create a price squeeze;

- free use of the ILEC's customer goodwill by sharing in the corporate logo and brand names, built up over the years through exploitation of the ILEC monopoly, as well as the benefit of the ILEC's continuing investment in that goodwill. No enforcement action could ever rectify abuses -- affiliates will use the brand and customers will assume that the monopoly revenues of the ILEC stand behind it. We strongly object to permitting any use of the ILEC brand, particularly when there is no compensation structure even approaching what the market would require.

- allowing virtual collocation effectively permits the ILEC and the subsidiary an ongoing sharing of employees and assets, thereby undermining the purported independent operation of the separate subsidiary.

The theoretical premise of regulatory relief for an ILEC's separate DSL affiliate is that it will be legally situated to receive no more favorable treatment than would an unaffiliated company seeking the same services from the ILEC.

The NTIA suggestions in these areas provide no reasonable way to insulate the substantial advantages of the ILEC's affiliate, advantages that have accrued from years of protected monopoly status, nor do they provide an effective and efficient means to remedy violations. In our view, regulatory relief that provides the ILEC's advanced services affiliate with such cost and marketing advantages would significantly diminish the potential for continuing and robust competition. While the NTIA Letter recognizes the dangers of ILEC abuse and supports several important safeguards, it is fundamental to local competition that the ILEC-affiliate not be advantaged relative to other competitors.

In addition, NTIA's proposal for Section 251(c) "certification" is at odds with the Commission's own experience. The Commission and various state commissions have adjudicated regional Bell operating company (RBOC) petitions to provide long distance services under section 271, where the RBOCs represented full compliance with the checklist requirements, only for the Commission and state commission to find to the contrary. There is no basis to overcome experience as the proper guide as the most effective means to pursue a competitive environment.

On behalf of the undersigned competitive telecommunications and information service companies and associations, we urge the Commission to continue to adhere to the vigorous enforcement of the pro-competitive provisions of the Telecommunications Act of 1996.

In accordance with the Commission's *ex parte* rules, two copies of this letter will be submitted today to the Commission's Secretary's office.

Sincerely,

CompTel
H. Russell Frisby,Jr.
President

AT&T
Leonard J. Cali
Vice President & Director
Federal Regulatory Affairs

MCI WORLDCOM
Richard F. Whitt
Senior Policy Counsel
Internet & Data Markets

Commercial Internet eXchange Association
Barbara A. Dooley
President

Epoch Networks
Scott Purcell

netINS, Inc., and Internet Providers Association of Iowa
Michael S. Eggley
CEO, netINS, Inc. and
President, Internet Providers Association of Iowa

Washington Association of Internet Service Providers
Gary Gardner
Executive Director

wyoming.com and Wyocom LLC
Steve Mossbrook
President